

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Solvable Frustrations, Inc., Petition to)	
Amend Part 1 of the Commission's)	RM No. 11675
Rules to Specify Procedures for Class)	
Action Complaints)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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CTIA – The Wireless Association® (“CTIA”)¹ submits the following comments in response to the Commission’s Public Notice² and in opposition to the Petition for Rulemaking of Solvable Frustrations, Inc. (“Petitioner”).³

I. INTRODUCTION AND SUMMARY

Petitioner, a self-described “relatively new” “social network” whose mission is “requir[ing] wayward corporations . . . to fix the damage they have caused”⁴ asks the Commission to adopt Proposed Rule 1.737, which would support its new business model by

¹ CTIA is the international organization of the wireless communications industry for both carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² FCC Public Notice, EB RM No. 11675 (Sept. 6, 2012) (“Public Notice”), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0906/DOC-316111A1.pdf.

³ Petition for Rulemaking of Solvable Frustrations, Inc. dated July 19, 2012 (“Petition”), available at <http://apps.fcc.gov/ecfs/document/view?id=7021996463>.

⁴ Petition at 1; *see also* <http://solvablefrustrations.com> (“Solvable Frustrations finds and exposes all the latest corporate complaints and gives you the chance to add your voice to other people with the same complaints. Together, you have the power of numbers and the leverage to get the change or recompense you all deserve.”) (last visited October 4, 2012).

allowing it to file class action complaints in the Commission on behalf of some of its members.⁵ Petitioner's request woefully misses the mark, as Proposed Rule 1.737 would be without precedent. No agency has ever presided over class claims against private parties or purported to bind absent class members. Even the EEOC class actions referenced in the Petition are not brought against private defendants and are not binding against class members. On the contrary, they can only be asserted against federal employers by federal employees, who may easily avoid the preclusive effect of the action by filing suit in court once they have exhausted their administrative remedies. Moreover, the Commission has repeatedly rejected the notion that the Commission has statutory (or any other) authority to preside over class actions or award attorneys' fees.

Proposed Rule 1.737 also would be without purpose. There are already public and private remedies available to consumers who may have claims against their carriers, and Petitioner has made no showing that those remedies require supplementation. Nor could it, as the Commission is able to require carriers to disgorge money to their customers, and customers are able to pursue private remedies (either in court or in arbitration) without invoking, much less exhausting, the Commission's administrative process.

Finally, Proposed Rule 1.737 would be without benefit. Attempting to administer class actions against carriers would easily exhaust the Commission's staff and resources, and would be unsuccessful in any event, as the Commission lacks the statutory authority and processes that allow the judiciary to manage complex class actions. Rather than benefitting consumers, the Petitioner's proposal risks diverting Commission resources from its core duties as well as

⁵ Petitioner also is compiling complaints against airlines, banks, credit card companies, cruise lines, utilities, fitness centers, cable companies, internet access providers, search engines, software designers, and automobile manufacturers. See http://solvablefrustrations.com/list_complaints.php.

diverting dispute resolution from the fora and procedures established by Congress and would put the Commission on a collision course with the judiciary. Accordingly, the Petition should be denied.

II. DISCUSSION

A. Proposed Rule 1.737 Is Unnecessary, As Courts Are Already Able to Adjudicate Appropriate Class Claims Under Existing Procedures.

In asking the Commission to adopt new rules that would support its new business model, Petitioner implies that Proposed Rule 1.737 would address some unmet need. It would not, as there is no unmet need, and the rule would not address one even if there were.

Petitioner has not even tried to show that Proposed Rule 1.737 is necessary in the execution of the Commission's functions.⁶ Nor could it have, as administrative remedies are already available to address the rare instances in which violations of Commission rules require disgorgement. Petitioner says Proposed Rule 1.737 has "the advantage of providing the opportunity for all plaintiffs to receive damages,"⁷ which suggests that the Commission lacks authority to obtain monetary relief for large numbers of consumers. That is plainly wrong.⁸

⁶ See 47 U.S.C. § 154(i) ("The Commission may ... make such rules and regulations ... as may be necessary in the execution of its functions."); 47 U.S.C. § 201(b) ("The Commission may prescribe such rules and regulations as may be necessary ... to carry out the provisions of this chapter.").

⁷ Petition at 3; see also *id.* at 4 ("[C]lass actions enhance the likelihood that the carrier would be required to disgorge the fruits of its unlawful conduct.").

⁸ See Press Release, FCC Investigation Into Verizon Wireless "Mystery Fees" Results In Record Settlement (Oct. 28, 2010), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302489A1.pdf. (announcing settlement of enforcement action in which Verizon Wireless paid \$25 million to the U.S. Treasury and refunded a minimum of \$52.8 million to approximately 15 million customers); *In the Matter of AT&T Corp.; Billing for Unauthorized Services*, 19 FCC Rcd. 23137, 23138 (Dec. 1, 2004) (ordering AT&T to refund or credit all consumers who were erroneously charged a recurring basic rate charge); *Worldcom to Pay \$3.5 Million to Settle Slamming Charges*, The Associated Press, June 7, 2000 (discussing FCC settlement with Worldcom, which agreed to reimburse victims of slamming); *Adelphia Communications to Give Credit to Los Angeles-Area Cable Customers*, Daily News, Los Angeles, Oct. 3, 2003 (announcing \$6,100,000 award to consumers who were overcharged for cable services).

Moreover, the Communications Act contains an election of remedies that allows consumers to file claims outside of the administrative process,⁹ meaning consumers need not invoke, let alone exhaust, administrative remedies before the Commission. Instead, they can immediately commence a civil action or, depending on the dispute resolution process to which they agreed, commence an efficient arbitration proceeding in which their costs and potentially their attorneys' fees may be covered by their carrier.¹⁰ Again, Petitioner has made no attempt to show that those existing remedies have ever been or will ever be inadequate such that Proposed Rule 1.737 is necessary in the execution of the Commission's current functions. In short, the proposed rule is a solution in search of a problem.

B. Proposed Rule 1.737 Is Unlawful, As It Is Irreconcilably Inconsistent with the Communications Act.

The Petition also should be rejected because two central pillars of Proposed Rule 1.737 are inconsistent with the Communications Act and ignore decades of decisions interpreting it.¹¹

First, notwithstanding controlling precedent to the contrary, the Petitioner insists that "class actions are certainly contemplated by, and consistent with, the private remedies created under sections 206 through 209 of the Act."¹² But the Commission has held just the opposite,

⁹ 47 U.S.C. § 207 ("Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may *either* make complaint to the Commission as hereinafter provided for, *or* may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.") (emphasis added).

¹⁰ The Petition is wrong, then, to say that "in almost all instances, a litigant must bear his or her own costs." Petition at 2.

¹¹ See 47 U.S.C. § 154(i) ("The Commission may ... make ... rules and regulations ... not inconsistent with this chapter....").

¹² Petition at 8.

explaining that “class action lawsuits are *neither contemplated by, nor consistent with*, the private remedies created under sections 206 through 209 of the Act.”¹³

Proposed Rule 1.737 is allegedly modeled on the rules of the EEOC. But the EEOC “need look no further than § 706 [of Title VII] for its authority to bring suit ... for the purpose ... of securing relief for a group.”¹⁴ There is no similar authority under the Communications Act to pursue remedies on behalf of a class of consumers. Petitioner misconstrues or mischaracterizes the Commission’s prior rulings, claiming that they only held that its “Rules did not contemplate class actions,”¹⁵ the implication being that some different rules could contemplate class actions. This is simply wrong.¹⁶ Petitioner cites no authority for the proposition that the Commission can bind anyone in complaint proceedings other than defendants (who are subject to its jurisdiction

¹³ *In the Matter of Halprin, Temple, Goodman, & Sugrue v. MCI Telecomms. Corp.*, 13 FCC Rcd 22568, ¶ 29 (1998) (emphasis added); see also *Bruce Gilmore, et al. v. Southwestern Bell Mobile Sys., LLC*, 20 FCC Rcd 15079, ¶ 8 n.23 (2005) (“For purposes of clarity, the Commission notes that it is not permitted to adjudicate complaints under section 208 on a class action basis.”); *Jacqueline Orloff v. Vodafone AirTouch Licenses LLC*, 17 FCC Rcd 8987, ¶ 11 n.33 (2002) (“We note that the Commission cannot adjudicate complaints under section 208 on a class action basis.”); *MCI Telecomms. Corp. v. Pac. Bell Tele. Co.*, 8 FCC Rcd 1517, ¶ 32 (1993) (“Accepting defendant’s flow through argument would, in effect, transform MCI’s complaints into class action suits on behalf of its customers, a result neither expressly contemplated by nor consistent with the private remedy created under Sections 206-209 of the Act.”); *Certified Collateral Corp. v. Allnet Comms. Servs., Inc.*, 2 FCC Rcd 2171, ¶¶ 8, 14 (Comm. Car. Bur. 1987) (“[T]he Commission has no provisions regarding the certification of classes or procedures for maintaining class action suits.... Our Rules do not contemplate class action complaints, and we do not propose to accept such complaints for filing.”). Cf. *Certified Collateral Corp. v. Allnet Comms. Servs., Inc.*, 1986 FCC LEXIS 3823, ¶ 6 (March 19, 1986) (“the Commission has no rule regarding the certification of classes or the procedures for maintaining class action suits like federal district courts”).

¹⁴ See *General Telephone Co. of Northwest v. EEOC*, 446 U.S. 318, 324 (1980).

¹⁵ See Petition at 6 (emphasis added).

¹⁶ *MCI Telecomms. Corp.*, 8 FCC Rcd at 1526 ¶ 32 (“Accepting defendant’s flow through argument would, in effect, transform MCI’s complaints into class action suits on behalf of its customers, *a result neither expressly contemplated by nor consistent with the private remedy created under Sections 206-209 of the Act.*”) (emphasis added). Petitioner posits that the word “result” in that sentence does not modify “class action suits,” but rather modifies “transform MCI’s complaints into.” That interpretation of the Commission’s holding does not follow at all.

by virtue of violating Section 201) and individuals (who submit to its jurisdiction by virtue of filing a complaint pursuant to Section 207).¹⁷

Nor is there any such authority, as the Commission itself has said that it “is not a court and does not possess the broad jurisdictional authority of a court.”¹⁸ Indeed, even courts are reluctant to exercise jurisdiction over or affect the rights of absent parties. That is the very zenith of their power. Doing so is subject to strict procedural—indeed, constitutional—safeguards.¹⁹ Undeterred or unconcerned by that, Petitioner invites the Commission to issue rulings that would have claim preclusive effect against large classes of consumers who received at best indirect notice and who were not allowed to opt out of the class, and against carriers who had no meaningful opportunity to defend themselves.²⁰ The Commission should decline that invitation.

Second, even if the Commission had authority to preside over class actions, it has no authority to award attorneys’ fees. Proposed Rule 1.737(j) would have the Commission award attorneys’ fees to class action lawyers,²¹ and presumably “online social networks” such as the

¹⁷ See 47 U.S.C. § 207 (permitting “[a]ny person” to file complaint with Commission); *see also*, *e.g.*, 47 C.F.R. § 1.721 (requiring information about each named “complainant,” including names, addresses, occupations, counsel, evidence, damages, attempts to resolve disputes, etc.); 47 C.F.R. § 1.723 (allowing joinder of claims asserted by named “complainants”).

¹⁸ *In the Matter of Hill and Welch and Myers Keller Commns. Law Group*, 15 FCC Rcd 20432, 20436-39 (Oct. 26, 2000) (“Although the Commission does possess the authority to return funds to eligible entities, it does not follow that the Commission also possesses the authority to adjudicate claims of third parties to those funds. The Commission is not a court and does not possess the broad jurisdictional authority of a court.”).

¹⁹ *See, e.g., Richards v. Jefferson Cnty.*, 517 U.S. 793, 797 n.4 (1996) (“The opportunity to be heard is an essential requisite of due process of law in judicial proceedings”); *Singleton v. Wulff*, 428 U.S. 106, 113-14 (1976) (“[C]ourts must hesitate before resolving a controversy, even one within their constitutional power to resolve, on the basis of the rights of third persons not parties to the litigation.”); *Hansberry v. Lee*, 311 U.S. 32, 42 (1940) (due process requires that courts ensure “the protection of the interests of absent third parties who are to be bound”).

²⁰ *See infra*.

²¹ *See* Proposed Rule 1.737(j) (“In cases where the class complaint results in the recovery of monetary damages, the administrative judge shall have authority to award attorney’s fees under the Common Fund doctrine.”).

Petitioner.²² But that runs headlong into Section 206 of the Communications Act, which allows fees “to be fixed by the court,” but not to be fixed by the Commission. Courts have held, and the Commission has agreed, that the Commission has no authority to award attorneys’ fees:

Congress, and not the Commission, can authorize an exception to the ‘American Rule’ that litigants bear the expense of their litigation.... Congress has no more extended a ‘roving commission’ to the FCC than it has to the Judiciary ‘to allow counsel fees as costs or otherwise whenever the ...[Commission] might deem them warranted.’ The Commission in its opinion noted that ‘Congress has not hesitated in other circumstances to authorize fee awards explicitly when it has determined such authorizations to be warranted.’ In fact, two provisions of the Communications Act specifically provide for the award of attorney’s fees in court litigation.²³

Petitioner suggests that the Commission look to a 130 year old decision mentioning the common fund doctrine for its authority to award attorneys’ fees,²⁴ the idea being that awarding

²² Compare *Thorogood v. Sears, Roebuck & Co.*, 624 F.3d 842, 848-49 (7th Cir. 2010) (Posner, J.) (“class members are interested in relief for the class but the lawyers are primarily interested in their fees”) with Petition at 3-4 (“[a] class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.”).

²³ *Turner v. FCC*, 514 F.2d 1354, 1356 (D.C. Cir. 1975); see also *Metrocall, Inc. v. Southwestern Bell Tel. Co.*, 16 FCC Rcd 18123, 18129 ¶ 18 (2001) (citing *Comark Cable Fund III v. Nw. Ind. Tel. Co., Inc.*, 100 F.C.C. 2d 1244, 1257, ¶ 31 n.51 (1985) (“[W]e have no power to award attorneys fees and that request will be denied.”)); *Ascom Commc’ns, Inc. v. Sprint Commc’ns Co., L.P.*, 15 FCC Rcd 3223, 3236 ¶ 31 (2000) (“Ascom has also requested that we order the defendants to pay attorneys’ fees, costs and disbursements. We deny this request, as we have no authority to award attorneys’ fees and costs.”); *Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Co.*, 11 FCC Rcd 11202, 11208, ¶ 16 (1996) (“We agree with SWB that we do not have the authority to grant costs and attorneys’ fees. Thus, we dismiss Multimedia’s request.”); *Newport News Cablevision, Ltd. v. Virginia Electric & Power Co.*, 7 FCC Rcd 2610, 2613, ¶ 19 (Com. Car. Bur., Apr. 27, 1992) (“In light of prior Commission decisions, we cannot award attorney’s fees to Newport News.”); *Strouth v. Western Union*, 70 FCC 2d 506, 511 (1978) (“We ... adopt the Judge’s conclusion that the Commission has no power to award costs and counsel fees incident to the subject proceeding.”); *In Re Application of Radio Station WSNT, Inc., for Renewal of License Station WSNT, Request of Richard Turner et al. for Reimbursement of Expenses*, 45 F.C.C.2d 377, 381-82 (1974), *aff’d*, *Turner v. FCC*, 514 F.2d 1354 (D.C. Cir. 1975) (“[F]ee shifting was well known to Congress when the Act was adopted, and Congress did not choose to number it specifically among the Commission’s regulatory tools. Moreover, any attempt to infer such power from general grants of authority has to be considered in the light of the traditional rule in this nation’s courts against awards of attorney’s fees, the strict limitations on the Commission’s powers under the Act to require broadcast licensees to pay out money, and the fact that Congress has not hesitated in other circumstances to authorize fee awards explicitly when it has determined such authorization to be warranted.”).

²⁴ See Proposed Rule 1.737(j) (citing *Trustees v. Greenough*, 105 U.S. 527 (1882)).

fees is part and parcel of presiding over a class action that creates a fund. The Petition fails to mention that the Commission has previously been asked to do that, however, and it declined, reasoning that it is not a court and does not have the equitable powers on which the common fund doctrine is based.²⁵

C. Proposed Rule 1.737 Is Unrealistic, As the Commission Does Not And Likely Never Will Have The Resources Required To Implement It.

The Petition fails to mention, much less address, the massive investment of time and resources that would be required of the Commission if it were to implement Proposed Rule 1.737 and begin presiding over putative class actions.

The traditional venue for class actions—the judiciary—is best equipped to handle them. The federal judiciary, which handles only certain kinds of interstate class actions,²⁶ has 677 district court judgeships and 179 circuit court judgeships,²⁷ each with Article III protection, with law clerks who help research and draft opinions,²⁸ and with the ability to refer matters to

²⁵ See *In the Matter of Hill and Welch*, 15 FCC Rcd. 20432, 20435-37 (2000) (“the Commission lacks the ‘judicial equity power’ to apply the common fund doctrine to determine whether the petitioners are entitled to attorney’s fees.... Petitioners have failed to present authority, and we are aware of no precedent for the proposition that a federal agency has equitable jurisdiction to establish a common fund... Unlike the courts, administrative agencies, like the Commission, do not possess such powers.”); *In the Matter of Hill & Welch*, 22 FCC Rcd. 5271, 5274-75 (2007) (“[P]recedent and case law amply demonstrate that a common fund award can arise only in the context of litigation before an appropriate court exercising its equitable powers.... [I]t is well settled that the Commission, as an administrative agency, lacks the equitable jurisdiction to establish a common fund award.”); see also *Knight v. U.S.*, 982 F.2d 1573 (concluding that the Department of the Interior was “in no position” to recognize a law firm’s claim to a common fund award because “[r]ecovery under the common fund doctrine stems from the equitable power of a court”).

²⁶ See 28 U.S.C. § 1332(d)(2) (“The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000 ... and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant....”).

²⁷ See, e.g., <http://www.uscourts.gov/JudgesAndJudgeships/FederalJudgeships.aspx>.

²⁸ See, e.g., S. Rep. No. 109-14, at 52 (2005) (“Federal court judges usually have two or three law clerks....”).

magistrates or special masters,²⁹ who in turn have their own law clerks or staff to assist them. Those judges, magistrates, clerks and staff require an infrastructure of 305 different courthouses throughout the United States.³⁰ Even the EEOC, whose rules Petitioner claims to be the model for Proposed Rule 1.737, has investigators, conciliators, and approximately 100 Administrative Judges working in “offices in Washington, D.C. and through 53 field offices serving every part of the nation.”³¹ And yet despite those vast resources, presiding over class actions presents a significant burden to both the judiciary³² and the EEOC.³³ How can the Commission—with one

²⁹ See, e.g., *id.* at 52 (“[F]ederal court judges usually can delegate aspects of their cases (e.g., discovery issues) to magistrate judges or special masters....”); see also 28 U.S.C. §§ 631(a) (“The judges of each United States district court and the district courts of the Virgin Islands, Guam, and the Northern Mariana Islands shall appoint United States magistrate judges in such numbers and to serve at such locations within the judicial districts as the Judicial Conference may determine under this chapter.”); Fed. R. Civ. P. 53(a)(1) (“[A] court may appoint a master” to “perform duties consented to by the parties,” to “hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted,” and to “address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.”).

³⁰ See Court Locator, available at http://www.uscourts.gov/Court_Locator/CourtLocatorSearch.aspx (within the “Court Type” window, select “District Court,” and then select “Locate.”).

³¹ EEOC Overview, available at <http://www.eeoc.gov/eeoc/index.cfm>; 29 C.F.R. § 1614.204(f)(3) (“During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the complaint or any portion be conducted by an agency certified by the Commission.”). Cf. *EEOC v. CRST Van Expedited, Inc.*, No. 07-cv-95, 2009 WL 2524402, at * 16 (N.D. Iowa Aug. 13, 2009) (awarding defendant \$4 million in attorneys’ fees and costs because EEOC “did not conduct any investigation of the specific allegations of the allegedly aggrieved persons for whom it seeks relief ... before filing the Complaint.”).

³² See, e.g., *Sandeson v. Winner*, 507 F.2d 477, 480 (10th Cir. 1974) (“[C]lass actions are a heavy burden to all of the courts, and especially to the trial courts”).

³³ See, e.g., *EEOC Federal Sector Workgroup Report, The Federal Sector EEO Process: Recommendations for Change* § III(G) (Oct. 2, 1997) (“Some of the AJs told the Working Group that due to time and docket constraints, they are often unable to devote the time necessary to obtain all of the information required to make a determination on class certification.”); EEOC Performance & Accountability Report FY2011, available at http://www.eeoc.gov/eeoc/plan/2011par_performance.cfm (“Systemic cases ... require a large investment of resources, highly trained investigators and attorneys, and sophisticated expert analysis by statisticians, industrial psychologists, and labor market economists. The Commission has been devoting significant resources to strengthening its systemic-oriented skill set....”); EEOC Fiscal Year 2013 Congressional Budget Justification, available at Justification, <http://www.eeoc.gov/eeoc/plan/2013budget.cfm#table5> (“Systemic cases typically require substantial resources in terms of professional staff time and litigation expenses, including expert witnesses, the costs of an extensive motion and discovery practice, and travel. Therefore, even a modest increase in systemic litigation activity has a major impact on the resources needed and will have an impact on the quantity of smaller sized cases the Commission is able to litigate.”).

Administrative Law Judge,³⁴ and no network of magistrates, special masters, or law clerks—possibly be expected to assume responsibility for even a fraction of this burden without its rulemaking, enforcement and other responsibilities being compromised and its budget being exhausted? The Commission simply is not equipped to supplant the role of the courts in adjudicating class actions.

Further, the Petitioner actually is asking the Commission to do exponentially more than the EEOC is doing. The EEOC presides over class actions filed by federal employees.³⁵ Even a class consisting of every full-time federal employee would be limited to approximately 2,000,000 people, all with current addresses.³⁶ By contrast, Proposed Rule 1.737 would oblige the Commission to preside over class actions filed by any “customer.”³⁷ A case brought on behalf of the customers of even one major carrier would dwarf the largest possible EEOC class,³⁸ and a case brought on behalf of all carriers’ customers would include virtually every adult in the United States,³⁹ many without current (or even recent) addresses. In short, not only does the Commission have fewer resources than the EEOC, it is being asked to do significantly more than the EEOC.

³⁴ See <http://www.fcc.gov/office-administrative-law-judges>. The Commission has no need for an army of Administrative Law Judges, as it currently resolves most formal complaints on the basis of a written record. See 47 C.F.R. § 1.720 (“Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments.”).

³⁵ See 42 U.S.C. § 2000e-16; 29 C.F.R. § 1614.204.

³⁶ See U.S. Office of Personnel Management, Planning and Policy Analysis Data Analysis Group, *Common Characteristics of the Government* at 14-16, Appendix, Table 3 (December 2010), available at <http://www.opm.gov/feddata/ccog.pdf> (1,831,719 full time federal employees).

³⁷ See Proposed Rule 1.737(a).

³⁸ See, e.g., In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report, FCC 11-103, at 9, 34, 96 (June 27, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-103A1.pdf.

³⁹ See *id.*

The experience of the Commodity Futures Trade Commission (“CFTC”) is instructive. In 1994, the CFTC was asked to adopt class action rules. After receiving public comments and considering the issues, it declined to do so, finding that “its resources would be used more effectively elsewhere”:

[T]he procedural and administrative requirements of class action suits would increase both the costs to the [CFTC] and the time necessary for resolution of such cases. The parties consider class actions out of place in the reparation forum because it was designed for quick and inexpensive resolution of disputes whereas class action litigation must be conducted with formality and strict attention to procedural issues and is often lengthy.... The [CFTC] finds that ... its resources would be used more effectively elsewhere....⁴⁰

The same logic applies with equal if not greater force here; a class action against one carrier could divert Commission resources away from its core statutory duties and exhaust much of the Commission’s precious resources, and could never provide the same degree of clarity or guidance as a rulemaking pursuant to its notice and comment procedures. Those procedures, not the unprecedented class action procedures contemplated by the Petition, are far and away the preferable mechanism for developing and announcing forward-looking rules of general applicability.⁴¹

⁴⁰ See 59 Fed. Reg. 9631 (1994) (rejecting rule); See also Futures Trading Practices Act of 1992, H.R. 707, 102d Cong., 2d Sess., P.L. 102-546 (1992) (codified at 7 U.S.C. § 18(2)(a)).

⁴¹ See, e.g., Richard J. Pierce, Jr., I Administrative Law Treatise § 6.8 (4th ed. 2002); see also DOJ, *Attorney General’s Manual on the Administrative Procedure Act* 13-14 (1947) (“Rule making is agency action which regulates the future conduct of entire groups of persons or a single person; it is essentially legislative in nature Conversely, adjudication is concerned with the determination of past and present rights and liabilities.”); 5 U.S.C. § 551(4) (defining “rulemaking” as formulating an agency statement of “future effect”); Administrative Procedure Act: Legislative History, S. Doc. No. 79-248, at 13 (1946) (stating that adjudications were intended to “pronounce past or existing rights or liabilities.”).

D. Proposed Rule 1.737 Is Unworkable, As Class Actions Filed With The Commission Would Be Neither Efficient Nor Effective.

Even if one assumes for argument's sake that the Commission has the authority to adopt and implement Proposed Rule 1.737, the Petition should still be denied because the class actions it contemplates would be neither efficient nor effective.

The courts already adjudicate class action claims using procedures that have been refined over the course of decades.⁴² These procedures, found in the federal system in Federal Rule of Civil Procedure 23,⁴³ include: (1) conducting a rigorous analysis of the record and determining whether to certify the action as a class action as meeting one of the types of class actions authorized by Rule 23(b); (2) resolving an interlocutory appeal from that decision;⁴⁴ (3) defining the class and appointing class counsel and class representatives;⁴⁵ (4) directing appropriate notice to the class;⁴⁶ (5) reviewing and approving settlements of class action claims that are binding on class members only on a finding that it is “fair, reasonable, and adequate;”⁴⁷ and (6) in a certified class action, awarding attorney’s fees and nontaxable costs as authorized by law or the parties’ agreement.⁴⁸ The Commission has no mechanisms for doing any of that—which is not surprising, given the absence of authority in the Communications Act or elsewhere to conduct any of these procedural and substantive legal requirements.

⁴² See Fed. R. Civ. P. 23 & Advisory Committee Notes.

⁴³ See Fed. R. Civ. P. 23.

⁴⁴ See Fed. R. Civ. P. 23(f).

⁴⁵ See Fed. R. Civ. P. 23(g).

⁴⁶ See Fed. R. Civ. P. 23(c)(2).

⁴⁷ Fed. R. Civ. P. 23(e)(2).

⁴⁸ Fed. R. Civ. P. 23(h)

The Petition posits that Proposed Rule 1.737 promotes judicial efficiency and economy, arguing that “[a] class action lawsuit utilizes a single judge in a single court.”⁴⁹ But that assumes, of course, that there would only be “a” class action, *i.e.*, “a single lawsuit rather than multiple lawsuits in multiple venues.”⁵⁰ In reality, many class actions are often filed in many courts,⁵¹ leading to duplicative discovery, judicial inefficiency and inconsistent rulings. The judiciary is uniquely equipped to handle class actions in ways that administrative agencies are not and never will be.

First, the 305 federal courthouses around the country afford litigants a convenient forum in which to resolve intrastate disputes.⁵² By contrast, the Commission is in Washington, D.C., which may only be appropriate for the resolution of truly nationwide disputes, and still may not be a convenient venue for many plaintiffs and their counsel.⁵³

Second, the federal courts are equipped with case management procedures to streamline the handling of multiple, overlapping class actions filed in different district courts. For example, the Judicial Panel on Multidistrict Litigation can transfer “civil actions” to one “district court” for coordinated proceedings, which “promote[s] the just and efficient conduct” of class actions.⁵⁴

⁴⁹ Petition at 2.

⁵⁰ *Id.* at 3.

⁵¹ *See, e.g.*, S. Rep. No. 109-14, at 75 (2005) (“[P]laintiffs’ lawyers frequently file hundreds of overlapping class action lawsuits in various state court jurisdictions around the country. And since we have 50 different state court systems, these cases cannot be coordinated or consolidated before one judge. As a result, both sides have to engage in duplicative discovery, the judges end up duplicating each others’ work, and different courts often reach different decisions on the same pretrial issues.”).

⁵² *See supra.*

⁵³ *Cf. Application of Daniel Forrestall*, 8 FCC Rcd 884, 886 n.10 (Feb. 3 1993) (holding that a “private dispute concerning state law ... is more appropriately heard in local courts or other forums”); *Application of John Kingsbery*, 71 F.C.C.2d 1173, ¶ 4 (May 9, 1979) (“Petitioners’ claims are a matter of private dispute which ... must be satisfied in local courts or other appropriate forums.”)

⁵⁴ *See* 28 U.S.C. § 1407(a) (“When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict

By contrast, there is no procedural mechanism for transferring district court actions to the Commission or transferring Commission actions to the district courts.⁵⁵ Similarly, federal courts can enjoin state court litigation, for example, to prevent re-litigation of federal judgments or disruption of federal settlements.⁵⁶ The Commission, by contrast, lacks the authority to manage competing and conflicting litigation. It follows that Proposed Rule 1.737 would exacerbate, not eliminate, the inherent inefficiencies of class action litigation.

Third, federal courts have authority to address the full panoply of claims that are typically asserted in consumer class actions, including state consumer protection claims, breach of contract, and common law fraud and negligence claims. That promotes judicial economy by deterring claim-splitting.⁵⁷ By contrast, the Commission is strictly limited to hearing disputes that fall within its jurisdiction, meaning subscribers filing an action with the Commission would be obliged to abandon their state law claims or pursue them elsewhere in a parallel proceeding.⁵⁸

litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.”).

⁵⁵ At most, district courts can temporarily stay their proceedings pursuant to the primary jurisdiction doctrine while the Commission considers questions that are within its regulatory authority. *See, e.g., Fed. Power Comm’n v. La. Power & Light Co.*, 406 U.S. 621, 647 (1972). Courts can do that now, however.

⁵⁶ *See* 28 U.S.C. § 1651(a) (“[A]ll courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”); 28 U.S.C. § 2283 (permitting federal court to enjoin state court “where necessary in aid of its jurisdiction, or to protect or effectuate its judgments”); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988); *Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 294 (1970).

⁵⁷ *See* 28 U.S.C. § 1332(d) (“The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000 ... and is a class action in which ... any member of a class of plaintiffs is a citizen of a State different from any defendant....”); 28 U.S.C. § 1367(a) (“[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy....”).

⁵⁸ Although Congress can grant agencies supplemental jurisdiction over state law claims, the intent to do so must be manifest. *See Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 841 (1986). Nothing in the Communications Act—or anywhere else, for that matter—manifests such an intent here. On the contrary, the Commission has repeatedly found that it has no jurisdiction over state law claims. *See, e.g., American Cellular Corp., et al., v. BellSouth Telecom., Inc.*, 22 FCC Rcd. 1083, 1089 (2007) (noting that “Complaint does not (and could not here) assert state law claims”); *In re Webb, et al.*, 20

It would be wholly inefficient to adjudicate class actions that seek remedies only under Title 47. The limitations on the Commission's jurisdiction to address the kinds of claims that are invariably asserted in consumer class actions make Proposed Rule 1.737 inefficient and essentially useless.

Fourth, federal courts have established rules governing the settlement of class actions, particularly when different attorneys pursued the same suit on behalf of the same putative class.⁵⁹ Those rules are important for a number of reasons, not the least of which being that a very high percentage of certified class actions settle,⁶⁰ and the burden on the courts if it were otherwise would be extraordinary. Yet Proposed Rule 1.737 has no obvious mechanism for proposing a binding settlement, let alone hearing and resolving objections from those who would be bound or allowing class members to opt out if they would prefer not to be bound.

The CFTC's experience is instructive here as well. In declining to adopt its own class action procedures, it reasoned that it could not "offer a useful alternative to the federal courts":

FCC Rcd. 17997, *5 (2005) ("[I]t is well established under Commission precedent that the Commission is not the proper forum for resolving private disputes under state law...."); *Gilmore v. Southwestern Bell Mobile Sys., LLC*, 20 FCC Rcd 15079, ¶ 8 (2005) ("On July 25, 2002, the Federal District Court dismissed the case without prejudice, referring the Act-related issues to the Commission under the doctrine of primary jurisdiction and retaining jurisdiction to resolve any remaining issues, including damages, once the Commission ruled on liability."); *Application of Lee Optical*, 2 FCC Rcd. 5480, 5482 (1987) ("The Commission has long held that it 'has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements between parties' [and therefore leaves] the resolution of such claims to local courts...."); *Application of Algreg Cellular Engineering*, 9 FCC Rcd. 5098, 5130 (1994) (refusing to hear state law claims, as they are "better resolved in an appropriate judicial forum."); *Application of Daniel Forrestall*, 8 FCC Rcd. 884, 886 (1993) (holding that Commission has "no jurisdiction [over a] private dispute concerning state law"); *Application of John Kingsbery*, 71 F.C.C.2d 1173, 1174 (1979) ("[P]etitioners' claims are a matter of private dispute which, as we have traditionally held, are beyond our regulatory jurisdiction....").

⁵⁹ See, e.g., Fed. R. Civ. P. 23(e).

⁶⁰ See, e.g., Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* at 6 (2005) (stating that according to 2005 study, certified class actions settled ninety percent of the time); Private Securities Litigation Reform Act of 1995, 104 S. Rpt. 98 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 687-88 ("Of the approximately 300 securities lawsuits filed each year, almost 93% settle....").

[G]iven the ability to pursue class actions in federal court, there would be no benefit to the public by the adoption of procedures to implement class actions before the Commission. While the parties agree that the Commission has more expertise in administering the Commodity Exchange Act than do federal courts, this advantage is considered insignificant compared to the resources and procedural advantages available in the federal courts.⁶¹

The result should be no different here. The Commission's expertise in administering the Communications Act is greatly outweighed by the resources and procedural advantages available in the courts to manage class action. The EEOC class action rules that inspired the Petitioner arguably make sense under Title VII because it is the EEOC, not individuals, that "bears the primary burden of litigation" under Title VII.⁶² The same cannot be said of litigating under Title 47.

E. Proposed Rule 1.737 Is Unprecedented, As It Would Bind Named And Unnamed Parties Alike Without Affording Them Due Process of Law.

The Petition should be denied because granting it would harm the very consumers the Petitioner purports to represent. Specifically, it would create an unprecedented mechanism for binding absent class members to damages actions without the protections required by due process, such as giving notice, allowing discovery, empaneling juries, or permitting appeals.

First, Proposed Rule 1.737 requires only indirect notice through "reasonable" means,⁶³ whereas Federal Rule of Civil Procedure 23 requires direct notice to absent class members whose

⁶¹ See 59 Fed. Reg. 9631 (1994) (rejecting rule); see also Futures Trading Practices Act of 1992, H.R. 707, 102d Cong., 2d Sess., P.L. 102-546 (1992) (codified at 7 U.S.C. § 18(2)(a)).

⁶² See *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 286 (2002) (quoting *Gen. Tel. Co. of Northwest, Inc. v. EEOC*, 446 U.S. 318, 326 (1980)).

⁶³ See Proposed Rule 1.737(e), (i) (requiring "reasonable" notice).

addresses can be identified through reasonable effort.⁶⁴ But the quality of notice is not just a requirement of the Federal Rules. Rather, those Rules reflect what the Constitution requires in order to protect class members whose damages claims are litigated without their involvement.⁶⁵ While it is true that the EEOC rules require only “reasonable” notice, they do not bind anyone.⁶⁶ Proposed Rule 1.737, on the other hand, purports to bind both named and unnamed parties alike. As such, it must comply with due process. Petitioner’s suggestion to the contrary ignores not only decades of precedent but the interests of the consumers it purports to represent.⁶⁷

Second, whereas class members may choose not to be bound by damages class actions filed in the courts (by opting out)⁶⁸ and employment actions filed in the EEOC (by filing suit),⁶⁹

⁶⁴ See Fed. R. Civ. P. 23(c)(2)(B) (“For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, *including individual notice to all members who can be identified through reasonable effort.*”) (emphasis added).

⁶⁵ See, e.g., Fed. R. Civ. P. 23, Advisory Committee Note, 1966 Amendments (“This mandatory notice pursuant to subdivision (c)(2) . . . is designed to fulfill requirements of due process to which the class action procedure is of course subject.”); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 US 306, 315 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice.... It would be idle to pretend that publication alone ... is a reliable means of acquainting interested parties of the fact that their rights are before the courts.... Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.”); see also *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974) (“Individual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.... In *Mullane* the Court ... observed that notice and an opportunity to be heard were fundamental requisites of the constitutional guarantee of procedural due process.”); *Schroeder v. City of New York*, 371 U.S. 208, 212-13 (1962) (“notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable”).

⁶⁶ See *infra*.

⁶⁷ The notice required by Proposed Rule 1.737 is defective for other reasons as well. For example, the content of the notice required by Proposed Rule 1.737 is lacking when compared to Rule 23(c)(2)(B). Compare Proposed Rule 1.737(e)(2) (requiring notice to provide the name of the venue, the name of class representative, a description of the complaint, and a notice regarding the binding effect of a final decision) with Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii) (requiring, in addition to those things, the definition of the class certified, notice that class members may enter an appearance through an attorney, notice that class members may opt out of the class, and directions for opting out of the class). Moreover, its deadline for giving notice (15 days after acceptance of a complaint and 30 days after a ruling) is patently unrealistic given the size and nature of the classes that would likely be involved. See Proposed Rule 1.737(e), (i).

⁶⁸ See Fed. R. Civ. P. 23.

⁶⁹ An “opt out” procedure was eliminated from the EEOC rules because employment class actions are generally filed under subsection (b)(2), under which there is no opt out right, rather than under (b)(3),

they would have no such choice in connection with actions filed with the Commission under Proposed Rule 1.737. Petitioner proposes no such mechanism, perhaps because it recognizes that Section 207 is an election of remedies provision, not an exhaustion of remedies provision.⁷⁰ In other words, having been represented in an action before the Commission, a customer could not then file suit in federal court. Whatever the reason, though, Proposed Rule 1.737 has no opt-out mechanism. That offends due process no less than the failure to provide proper notice.⁷¹

Third, any party can request a trial by jury in a court proceeding,⁷² assuming, of course, that they have not waived that right by agreement or otherwise. Adopting Proposed Rule 1.737 would strip litigants of that right by driving class actions into an agency adjudication in which no jury would be empaneled. It is one thing for the federal government to deprive itself of a jury, which is essentially what the EEOC rules do. It is another thing entirely to deprive millions of private parties a jury, which is what Proposed Rule 1.737 would do.

under which there is an opt out right. *See, e.g.*, Fed. Reg. Vol. 57, No. 70, at 12638-39 (April 10, 1992). Even so, EEOC class actions have no claim preclusive effect outside of the administrative process; claimants must simply exhaust their remedies under that administrative process before filing suit in court. *See, e.g.*, 42 U.S.C. § 2000e-16(c); 29 C.F.R. § 1614.407.

⁷⁰ *See* 47 U.S.C. § 207 (“Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may *either* make complaint to the Commission as hereinafter provided for, *or* may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; *but such person shall not have the right to pursue both such remedies.*”) (emphasis added); *see also* *TON Servs. v. Qwest Corp.*, 493 F.3d 1225, 1240 (10th Cir. 2007) (“In providing a federal court forum under the [Act], Congress made it clear that it did not intend to require that suits ... first be decided by the FCC.”); *Premiere Network Servs v. SBC Commns., Inc.*, 440 F.3d 683, 688 (5th Cir. 2006) (“Section 207 is an election-of-remedies provision....”); *Brown v. MCI Worldcom Network Servs., Inc.*, 277 F.3d 1166, 1173 (9th Cir. 2002) (“The Act does not require that a plaintiff exhaust his administrative remedies before proceeding to federal court....”).

⁷¹ *See, e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985) (“[D]ue process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form to the court.”).

⁷² *See, e.g.*, Fed. R. Civ. P. 38(a) (“The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.”); U.S. Const. amend. VII (“In Suits at common law ... the right of trial by jury shall be preserved”).

Fourth, Proposed Rule 1.737 only allows discovery pursuant to 47 C.F.R. § 1.729,⁷³ which in turn only allows each party 15 interrogatories,⁷⁴ and only permits document requests, depositions (including expert depositions) and other discovery with leave of the Commission.⁷⁵ That would not allow a party to defend—or prosecute, for that matter—a class action. Indeed, the volume of discovery that is allowed in some class actions is such that even the most stalwart defendants settle even the most questionable claims.⁷⁶ Proposed Rule 1.737 may well “minimize burdens” as Petitioner suggests,⁷⁷ but it also would jeopardize the ability to litigate the dispute. It would be unfathomable for a court to conduct an entire class action on the basis of fifteen interrogatories and not a single deposition. Yet the Petition proposes just that.

Finally, whereas Rule 23(f) allows for permissive appeals from certification orders,⁷⁸ and rulings on the merits after the entry of final judgment, Proposed Rule 1.737 makes no mention of how one might obtain review of the Commission’s decisions on certification or on the merits.

⁷³ See Proposed Rule 1.737(f).

⁷⁴ See 47 C.F.R. § 1.729(a) (“[A] complainant may ... serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories.... A complainant may ... serve ... within three calendar days of service of the defendant's answer, a request for up to five written interrogatories.”).

⁷⁵ See 47 C.F.R. § 1.729(h) (“The Commission may allow additional discovery, including ... document production, depositions and/or additional interrogatories”).

⁷⁶ See, e.g., *Am. Bank v. City of Menasha*, 627 F.3d 261, 266 (7th Cir. 2010) (Posner, J.) (explaining that class action plaintiffs use “discovery to impose asymmetric costs on defendants in order to force a settlement advantageous to the plaintiff regardless of the merits of his suit.”); *Swanson v. Citibank, N.A.*, 614 F.3d 400, 411 (7th Cir. 2010) (Posner, J., dissenting) (“With the electronic archives of large corporations or other large organizations holding millions of emails and other electronic communications, the cost of discovery to a defendant has become in many cases astronomical. And the cost is not only monetary; it can include, as well, the disruption of the defendant's operations. If no similar costs are borne by the plaintiff in complying with the defendant's discovery demands, the costs to the defendant may induce it to agree early in the litigation to a settlement favorable to the plaintiff.”); Private Securities Litigation Reform Act of 1995, 104 S. Rpt. 98 (1995), reprinted in 1995 U.S.C.C.A.N. 679, 687-88 (“Most [class action defendants] choose to settle rather than face the enormous expense of discovery and trial.”); *id.* at 693 (“[T]he threat that the time of key employees will be spent responding to discovery requests, such as providing deposition testimony, may force coercive settlements.”).

⁷⁷ Petition at 1.

⁷⁸ See Fed. R. Civ. P. 23(f) (“A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered.”).

Oversight is especially important in class action litigation, in which many plaintiffs' claims are aggregated and adjudicated without their knowledge, let alone involvement. Yet there is no appellate review clearly provided for here.

Not to put too fine a point on it, Proposed Rule 1.737 would be without precedent. Although Petitioner has patterned it after the EEOC's class action rules, those rules apply only to employment actions against the federal government.⁷⁹ CTIA is not aware of any federal agency that presides—or has ever presided, for that matter—over class actions against private parties. As noted above, the Commission's sister agency, the CFTC, was asked to adopt class action rules in 1994 but declined to do so.⁸⁰ The Commission should do likewise.

III. CONCLUSION.

Adopting Proposed Rule 1.737 would not be warranted, workable, or sensible. Doing so would create an ineffective, inefficient substitute for the public and private remedies that already exist, and would require a staggering diversion of the Commission's resources. The result would be a Chimera that combines the worst possible attributes of EEOC class actions and civil class actions: binding absent parties but without giving notice, allowing discovery, empaneling juries, or permitting appeals. None of which would be good for customers, providers, the Commission,

⁷⁹ See, e.g., 29 C.F.R. §§ 1614.103 and 1614.204 (identifying complaint procedures for filing class actions under "Federal Sector" EEOC regulations); see also *Monreal v. Potter*, 367 F.3d 1224, 1226-27 (10th Cir. 2004) ("Special regulations govern the filing of discrimination claims by federal government employees."); *Johnson-Feldman v. Brown*, 1997 EEOPUB LEXIS 2726 at *7 (Aug. 7, 1997) (explaining that 1614.204 "provides for the processing of class action complaints of federal employees").

⁸⁰ See Futures Trading Practices Act of 1992, H.R. 707, 102d Cong., 2d Sess., P.L. 102-546 (1992) (codified at 7 U.S.C. § 18(2)(a)); see also 59 Fed. Reg. 9631 (1994) (rejecting rule).

or indeed anyone other than Petitioner. CTIA therefore requests that the Commission deny the Petition.

Respectfully submitted,

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